

## Valuing and Relevance of a Remainder Interest

In **Allen [2016] FCCA 163** the Husband sought an order that the parties obtain “a valuation of the property” of which the wife’s parents were the joint tenants of a life estate and the wife and her sister were tenants in common in equal shares of an estate in remainder.

The Wife opposed this Application on the basis that the property did not need to be valued as the Husband would have no claim on it for the following reasons:

- the property was owned and occupied by her elderly parents, who were in poor health;
- she only had a remainder interest in the property;
- she had acquired her interest in the property after the parties separated; and
- the husband had made no contribution to the acquisition of the property.

While **Judge Scarlett** noted that the order sought by the husband to have the ‘property valued’ was strictly incorrect he had no hesitation in noting that what needed to be valued was:

the Wife’s remainder interest in equal shares as a tenant in common with her sister subject to the life tenancy of her parents.

Judge Scarlett followed the decision of **Fowler J in Coroneos [2011] FamCA 12** who had made the following observations in a similar case:

*In determining the entitlement of the husband to such estate it is clear that he made no direct contribution to this estate in remainder and that it was in fact a gift at the hands of the intervener and as such the whole of the estate was acquired by contribution made on behalf of the wife.*

*In assessing a just and equitable distribution of the property of the parties or either of them I will take those matters into account but I cannot ignore the existence of the estate for the purpose of considerations under the provisions of [section 75\(2\)](#).*

Accordingly Judge Scarlett was satisfied that the wife’s remainder interest in the property was a financial resource within the meaning of [s.75\(2\)\(b\)](#) of the [Family Law Act 1975](#) and should be taken into account when considering the matters under [s.75\(2\)](#).

It obviously followed that there needed to be a valuation of that interest.